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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DAPHNE ANN BRENON,

Defendant and Appellant.

2d Crim. No. B222656
(Super. Ct. No. 2006014971)
(Ventura County)

Pursuant to a plea agreement, Daphne Ann Brenon pled guilty to two counts of felony grand theft (Pen. Code, § 487, subd. (a)) and one count of filing a false income tax return (Rev. & Tax. Code, § 19705, subd. (a)(1)). A third count of grand theft was dismissed. The plea agreement contained a *Harvey* waiver. (*People v. Harvey* (1979) 25 Cal.3d 754 (*Harvey*).)

Brenon challenges the trial court's order of restitution based on the dismissed count. We affirm.

FACTS

Brenon was president of a property management company. The company managed funds for the Westlake Spanish Oaks (Westlake) and the Spanish Hills homeowners associations. Brenon stole money from the associations by writing checks from their accounts to herself and her friends. The theft was disguised as payments for

services, but the services were never performed. Brenon took a total of \$458,325 from Spanish Hills and \$23,614 from Westlake.

Brenon entered into a plea agreement in which she pled guilty to one count of grand theft from Spanish Hills. The agreement contained a *Harvey* waiver. The count alleging theft from Westlake was dismissed. Spanish Hills stated that its loss was covered by insurance, and it was not seeking restitution. The court ordered Brenon to pay restitution in the amount of \$23,614 to Westlake.

DISCUSSION

Brenon contends the trial court erred in ordering restitution to Westlake, the victim in a dismissed count. She relies on *Harvey* which holds that a defendant may not suffer sentencing consequences pertaining to facts concerning dismissed counts absent an agreement to the contrary. (*Harvey, supra*, 25 Cal.3d at pp. 758-759.)

Brenon relies on *People v. Lai* (2006) 138 Cal.App.4th 1227. There, a jury convicted defendant of welfare fraud. At sentencing, the trial court's restitution order included money obtained prior to the time of the charged offense. The Court of Appeal reversed, stating that in sentencing the defendant to state prison section 1202.4 limits restitution caused by the criminal conduct for which the defendant was convicted. Section 1202.4, subdivision (a)(1) provides in part: "[I]t is the intent of the Legislature that a victim of crime . . . shall receive restitution directly from any defendant convicted of that crime."

But in *People v. Lai* the defendant was convicted by a jury. There was no *Harvey* waiver. In *People v. Beck* (1993) 17 Cal.App.4th 209, the defendant pled no contest pursuant to a plea agreement to eight counts of grand theft and one count of tax evasion. The plea agreement contained a *Harvey* waiver. The Court of Appeal affirmed a restitution order that included the dismissed counts. (*Id.* at pp. 216-218.)

Brenon attempts to distinguish *People v. Beck* on the ground that in that case there was a specific agreement to pay restitution on the dismissed counts; whereas here there was only what Brenon characterizes as a "general" *Harvey* waiver.

But on the written plea agreement, Brenon initialed the following provision: "I agree that all facts and information relating to any and all counts, allegations of prior convictions, and other sentencing enhancement allegations which are dismissed by the court as part of this disposition may be included in the probation report and considered by the court in determining sentence and restitution." Brenon stated in open court that she understood and agreed to the same provision. Brenon's attorney submitted the question of restitution to Westlake without objection.

Under the *Harvey* waiver, Brenon expressly agreed that the court could consider the dismissed counts in ordering restitution. That is sufficient to support the restitution order.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, Shira B. Seigle, Deputy Attorney General, for Plaintiff and Respondent.